

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 06-0427
Income Tax
For the Tax Years 1998-2001**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Adjusted Gross Income Tax – Forced Combination.

Authority: IC § 6-3-2-2(l)(m).

The Taxpayer protests the Department's forced combination of the Taxpayer and several related corporations.

II. Tax Administration – Statute of Limitations.

Authority: IC § 6-8.1-5-2(a)(b).

The Taxpayer protests the Department's application of the six year statute of limitations.

STATEMENT OF FACTS

The Taxpayer is related to a number of other corporations that filed consolidated federal income tax returns. Pursuant to an audit for the tax period 1998-2001, the Indiana Department of Revenue (Department) assessed additional adjusted gross income tax, penalties, and interest. The Taxpayer protested the assessment. A hearing was held and this Letter of Findings results.

I. Adjusted Gross Income Tax – Forced Combination.

DISCUSSION

The Department combined the Taxpayer and its related corporations into combined Indiana returns for the tax period 1998-2001 pursuant to the provisions of IC § 6-3-2-2 as follows:

. . .

(l) If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any of the taxpayer's business activity, if reasonable:

- (1) separate accounting;
- (2) the exclusion of any one (1) or more of the factors;
- (3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or

(4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(m) In the case of two (2) or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interests, the department shall distribute, apportion, or allocate the income derived from sources within the state of Indiana between and among those organizations, trades, or businesses in order to fairly reflect and report the income derived from sources within the state of Indiana by various taxpayers.

. . .

When a taxpayer's method of filing individual Indiana adjusted gross income tax returns for related corporations distorts the Indiana income or expenses, the Department is allowed to require that the related taxpayers file a combined return. The purpose of the forced combined return would be to fairly reflect the taxpayer and related corporations' actual Indiana income and expenses.

In this case, the Department failed to demonstrate in the audit report that sufficient distortion existed to justify a forced combined filing.

FINDING

The Taxpayer's protest to the forced combination is sustained.

II. Tax Administration – Statute of Limitations.

DISCUSSION

The Department applied the six (6) year statute of limitations for the issuance of the proposed assessment in this matter. The Taxpayer protested this extension of the normal three (3) year statute of limitations.

Pursuant to IC § 6-8.1-5-2(a), the statute of limitations for the Department to issue a proposed assessment is three (3) years. If the taxpayer understates its income by 25 percent or more, the statute of limitations is extended to six (6) years. IC § 6-8.1-5-2(b).

Since the Department sustained the Taxpayer's protest to the forced combination, the taxpayer did not understate its income by 25 percent or more. Therefore, the issue concerning the statute of limitations is moot.

FINDING

The Taxpayer's statute of limitations protest is moot.